

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Modernizing the E-rate)	WC Docket No. 13-184
Program for Schools and Libraries)	

**REPLY COMMENTS OF
THE STATE OF HAWAII**

The State of Hawaii,¹ by its attorneys, submits these reply comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) regarding modernizing the E-rate program for schools and libraries.² Hawaii’s initial comments provide a thorough discussion of many specific points raised in the NPRM; these reply comments focus on several specific suggestions that have been raised by some commenters.

The Department of Education (“DOE”) is the administrator for the State’s 255 public schools, forming the only statewide public education system in the United States, as well as 33 E-rate qualified charter schools across the islands. Similarly, the Hawaii State Public Library System (“HSPLS”) is the nation’s only statewide public library system, serving fifty libraries on the six major islands. As the State has explained in the past, many areas of Hawaii are rural, remote, and insular, and subject to the broadband deployment challenges of low population density, varied topography, and extreme weather that drive up broadband costs and reduce availability. As a result, Hawaii’s schools and libraries depend on the E-rate program to ensure that affordable, 21st-century broadband service is available to students and communities for

¹ The State is filing these comments through its Department of Education, the Hawaii State Public Library System, and the Department of Commerce and Consumer Affairs (“DCCA”).

² *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, FCC 13-100 (rel. July. 23, 2013) (“NPRM”).

whom these services would otherwise be cost prohibitive. The DOE and HSPLS therefore have a significant interest in the instant review and modernization of the E-rate program, and provide these comments to assist the Commission in considering the particular needs of schools and libraries in rural and remote areas such as those in Hawaii.

I. THE COMMISSION SHOULD CONTINUE TO RECOGNIZE THE NEED FOR AN EQUITABLE DISTRIBUTION OF LIMITED E-RATE FUNDING THAT TARGETS THOSE SCHOOLS AND LIBRARIES WITH THE GREATEST NEED

The record confirms broad support for the goals of the fund, but with systematic differences in the approaches that the Commission should employ to maximize the impact of the limited E-rate budget. Although nearly all parties agree that the E-rate program is underfunded to accomplish its mandate, the primary division among commenters is in how best to distribute limited funds.

Some commenters seek broader distribution of funds, such as through per-student and per-megabyte funding caps,³ or changes to the discount matrix to reduce the maximum support available to rural or high poverty areas.⁴ The chief rationale for such re-engineering proposals is that schools and libraries in rural and high poverty account for a substantial portion of disbursements and there is often not enough budget to accommodate the applications of schools and libraries with lower priority, such as those in urban and more affluent areas.⁵

³ Comments of the E-Rate Reform Coalition, WC Docket No. 13-184, at 7 (Sep. 16, 2013) (“*E-Rate Reform Coalition Comments*”).

⁴ Comments of South Dakota Department of Education and Bureau of Information and Telecommunications, WC Docket No. 13-184, at 16 (Sept. 16, 2013) (“*South Dakota Comments*”).

⁵ See, e.g., *E-Rate Reform Coalition Comments* (representing, among others, school districts for such communities as Fairfax County, Palm Beach County, Montgomery County, and the city of Philadelphia).

Hawaii is not insensitive to this concern for “equal” distribution. The rules for the E-rate program, however, clearly explain that although it is intended that all applicants receive at least “some support,” the program is designed to “equitably provide the greatest assurance of support to the schools and libraries with the greatest levels of economic disadvantage.”⁶ Equitable distribution is characterized by focused and sufficient support to ensure that even rural, remote, high-cost areas can provide students and communities with service commensurate with the rest of the nation.

A. The Discount Matrix Must Equitably Account for Both the Cost of Service and the Means of the Applicant

The E-rate rules recognize that “schools and libraries in rural areas would likely face higher costs for E-rate supported service,” and therefore provided an additional 5-10 percent discount rate for rural schools and libraries.⁷ This additional discount only applies to schools below the 60% discount rate, which is to say, it does not apply to the poorest schools with the highest National School Lunch Program (“NSLP”) participation and thus discount rates higher than 60%.⁸ The Commission should ensure that the 5-10 percent additional discount is applied to all schools and libraries in rural-remote areas, *especially* those that also face the challenge of high poverty. The State of Alaska explains that “both the poverty and the locale of an applicant are significant factors to consider. Each factor is only half of the whole picture, and both descriptors must be taken into consideration.”⁹ Thus, it is appropriate to apply the 5-10 percent

⁶ Federal State Joint Board on Universal Service, CC Docket No. 96-45, Fourth Report and Order, FCC 98-120, ¶ 35 (1998).

⁷ *NPRM*, ¶ 133.

⁸ *Id.*

⁹ Comments of the State of Alaska, WC Docket No. 13-184, at 14 (Sep. 16, 2013) (“*Alaska Comments*”).

additional discount to *all* schools and libraries in rural-remote areas, including those with high NSLP participation.

Equally important to achieving an equitable distribution, the Commission should also not reduce the top discount rate, in effect raising the matching percentage.¹⁰ Because even ten percent of the total cost of services can be a significant investment, increasing the share borne by low income schools would “dramatically hinder” their ability to keep up with changing technology.¹¹ The State of Alaska notes that in extremely remote areas, “[i]f their share of the cost were to increase... they would decrease rather than increase their broadband subscription out of economic necessity.”¹² Such reductions in services as a result of remoteness or poverty would be contrary to the purpose of the fund. As West Virginia Department of Education notes, the Commission should not reduce the support available to remote and low income schools at the same time it seeks to bring service to institutions up to par with the rest of the nation.¹³

Although some commenters understandably suggest that increasing the local matching requirement would force applicants to “think more carefully about these purchases...because they have more skin in the game,”¹⁴ the truth is that many schools in poor and remote areas simply lack the resources to afford services at the price they are offered, and the discount percentage is the difference between being able to afford such services or not. As Boston Renaissance Charter Public School notes, increasing the matching percentage would not result in

¹⁰ *NPRM*, ¶ 118.

¹¹ *See, e.g.*, Comments of Boston Renaissance Charter Public School, WC Docket No. 13-184 at 2 (Sept. 20, 2013) (“*Boston Renaissance Comments*”).

¹² *Alaska Comments* at 13.

¹³ Comments of the West Virginia Department of Education, WC Docket No. 13-184, at 45 (Sept. 16, 2013) (“*West Virginia Comments*”).

¹⁴ *South Dakota Comments* at 16.

more discriminating spending by most applicants because the limited budget that nearly all schools labor under does not allow extraneous purchases regardless of the price.¹⁵ The Commission should therefore refrain from increasing the matching percentage.

B. The Commission Should Not Adopt Per-Student or Per-Megabit Funding Caps

Whether per-student or per-megabit, rigid price caps could have the effect of inadvertently disqualifying areas where E-rate support is most needed, in those rural, remote, and Tribal areas where high-capacity bandwidth is least available and most expensive to provide. The Joint Commenters agree that “[c]osts vary considerably by state and geography” and that “[s]etting per student or per-school spending limits will likely discriminate against rural, smaller schools and may harm those urban schools with high costs.”¹⁶ The State Consortia Group explains that “network design and support works better with a needs-based approach.”¹⁷ As Alaska explains, “[w]e do not believe that per-pupil funding will meet the needs of a diverse nation because broadband costs are not level across the nation.”¹⁸ It logically follows that schools and libraries in remote or poor areas may pay more than average for services because “if the ‘business case’ could be made by the telecommunications providers to serve (and build infrastructure) in these areas, the service would exist already.”¹⁹

¹⁵ *Boston Renaissance Comments* at 3.

¹⁶ Comments of Joint Commenters, WC Docket No. 13-184, at 9-10 (Sept. 16, 2013) (“*Joint Commenters*”); *see also* Comments of Kansas State Department of Education, WC Docket No. 13-184, at 5 (Sept. 16, 2013) (“*Kansas Comments*”).

¹⁷ *Comments of the State Consortia Group*, WC Docket No. 13-184, at 3 (Sept. 16, 2013).

¹⁸ *Alaska Comments* at 14.

¹⁹ Comments of the Imperial County School District, WT Docket No. 13-184, at 12 (Sept. 16, 2013).

The Commission acknowledges that “anything but a very high per-student limit could prevent the smallest schools and particularly those in remote areas of the country, such as schools on Tribal lands, from affording supported services.”²⁰ Ultimately, per-pupil or per-megabit caps “can only place remote locations...at a disadvantage.”²¹ Because the most critical needs for the E-rate program are in the rural, remote, and impoverished areas, the proposed caps would have the effect of making exceptions of such areas. As Hawaii has previously explained, the premise that high-need schools and libraries would be exceptions to the rule for E-rate funding is inconsistent with the goal of the program to provide targeted assistance to those areas with the greatest need.²²

With regard to the need to ensure that applicants apply E-rate funding wisely, Hawaii notes that the local match is an a more effective tool, and one that scales appropriately. By design, those schools and libraries with the greatest discount percentages also tend to be those that, as noted above, cannot afford extraneous purchasing at any price, even a steep discount. The Commission should therefore refrain from instituting a cap, or ensure that any such cap can effectively accommodate schools and libraries in remote, high-cost, and low-competition areas without imposing additional administrative burdens.

C. The Commission Should Revise, But Not Abandon, the Current E-Rate Distribution Methodology

The Commission seeks comment on fundamentally changing the distribution of E-rate funding by eliminating the discount matrix and priority system in favor of a fixed budget.²³

²⁰ *NPRM*, ¶ 140.

²¹ *Alaska Comments* at 14.

²² *Comments of the State of Hawaii*, WC Dock. No. 13-184, at 3 (“*Hawaii Comments*”).

²³ *NPRM*, ¶ 149.

Hawaii concurs with the many commenters that urge the Commission to continue to use and refine the current approach rather than abandoning it. As Alaska explains, “[w]hile the funding cap continues to prove problematic, the current method used to distribute E-rate funding is not broken. It has worked well in the past and acknowledges the differences in economy and locale. We recommend that adjustments to the current system be made to improve upon it.”²⁴ The current priority system is an “established framework...[that] provides a more equitable, efficient, and timely” method of distributing funding than the proposed alternate methods.²⁵

Although the apparent simplicity of the proposed “fixed budget” alternative is attractive, it is axiomatic that things should be made as simple as possible but no simpler. In the case of E-rate, the current system, despite its difficulties, appropriately accounts for important differences between schools and libraries that affect the amount of support required to achieve equal service. The alternative approach is likely to lose this important distinction, and could easily introduce new and unforeseen complications as well. Hawaii concurs with Kansas and others that “any formulaic approach will introduce more complexity into the program, not less”²⁶ and the Commission should therefore refrain from fundamental changes to the E-rate framework, such as proposals to eliminate the priority framework.

II. THE COMMISSION SHOULD SEEK TO MINIMIZE ADMINISTRATIVE BURDEN WHERE POSSIBLE

Throughout the NPRM, the Commission seeks comment on how to reduce the administrative and paperwork burden on schools and libraries applying for E-rate funding.²⁷

²⁴ *Alaska Comments* at 15.

²⁵ Comments of National Education Association, WC Docket No. 13-184, at 7 (Sept. 16, 2013).

²⁶ *Kansas Comments* at 6.

²⁷ See, e.g., *NPRM*, ¶¶ 224, 160, 182, 193.

Despite widely varying opinions as to the appropriate distribution of limited funding, parties unanimously agree that the ultimate effectiveness of the E-rate program as a whole depends in part on how efficiently it can be administered. Administrative overhead draws personnel hours and funding away from the core goal of implementing technology programs to further education. Any streamlining of forms, deadlines, and requirements is therefore welcome.

The NPRM proposes several revisions that received wide support. For instance, many parties recognize the potential efficiency gains and reduced administrative burden available through the Commission's proposal for multiyear applications.²⁸ Hawaii also endorses the detailed and thorough list prepared by the State of Arkansas, which identifies specific and straightforward changes to simplify the E-rate application process.²⁹

The Commission should also refrain from introducing new administrative requirements that might offset the efficiency gains of the above streamlining measures. In particular, the Commission should not adopt potentially complicated rules seeking to delineate between services used directly for students and for the myriad critical functions in support of education.³⁰ Such networks are often constructed and operated as a whole, with administrative buildings often providing the hub for multiple buildings.³¹ Furthermore, use by teachers for essential activities such as lesson planning, grading, and collaboration is inherently part of the educational process.

²⁸ See, e.g., *National Association of Elementary School Principals*, WC Docket No. 13-184, at 6 (Sept. 16, 2013); *Joint Commenters* at 14-15 (urging three-year or longer contracts to permit long term capital upgrade decisions); Comments of the State of Arkansas, WC Docket No. 13-184, at 5 (Sept. 16, 2013) ("*Arkansas Comments*"); Comments of National Association of State Chief Information Officers, WT Docket No 13-184, at 3 (Sept. 16, 2013) ("*NASCIO Comments*").

²⁹ *Arkansas Comments* at 5.

³⁰ *NPRM*, ¶ 100.

³¹ *Joint Commenters* at 13.

The Commission has previously recognized this integrated reality by establishing a presumption that services provided on campus serve an educational purpose.³²

School districts agree that such additional requirements would “greatly complicate and add a layer of complexity to the program,” imposing additional administrative burden on program applicants.³³ As the Commission foresees, such rules would also likely be “too difficult to monitor or audit” and could raise cost-allocation challenges for schools with closely integrated networks that serve many functions.³⁴ Campus functions and the networks that support them are closely integrated, and attempts to narrow the definition of “educational purposes” would not serve educators and would introduce substantial uncertainty and inefficiency into the funding process. For these reasons, the Commission should take a broad understanding of the educational purposes for which E-rate services can be used, and refrain from adopting potentially complicated and burdensome changes.

III. CONCLUSION

Hawaii supports the Commission’s initiative to further align the E-rate program with its mission by updating the rules and promoting efficiency in the application for and use of E-rate funds. In doing so, the State urges the Commission to continue to recognize the need for equitable distribution that targets support to those schools and libraries that most need financial assistance, either because they lack the financial resources or because the services that are available in their area are more expensive, or often-times both. The E-rate program is intended to provide equitable support in the pursuit of equivalent service to schools and libraries in very

³² *NPRM*, ¶ 99.

³³ *West Virginia Comments*, at 45; *see also Kansas Comments* at 4.

³⁴ *NPRM*, ¶ 100.

different circumstances. The Commission should therefore refrain from adopting proposals such as per-student/per-megabit funding caps or a simplified “fixed budget” system that cannot account for important differences between applicants.

The Commission should also seek to improve the effectiveness of the program by reducing administrative burdens where possible, such as in streamlining the application and compliance process. The Commission should also take care not to offset administrative efficiency improvements by imposing new requirements, such as potentially complex rules to distinguish closely integrated systems and service into educational or administrative components.

Respectfully submitted,

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